



Who can Petition to Modify Custody?

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CUSTODY MODIFICATION

A GUIDE TO CUSTODY MODIFICATION IN THE FAMILY COURT

FAMILY COURT OF THE STATE OF DELAWARE

<http://courts.state.de.us/family>

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How do I modify a custody order?

You may file a Petition to Modify Custody if the following requirements are met:

- 1) There is a custody order in place in Delaware. (If the order is from a state other than Delaware, see below); AND
- 2) You want to change the terms of the current order; AND
- 3) The child, parent, or person acting as parent resides in Delaware.

What if the custody order was entered in a state other than Delaware?

To request modification of a custody order entered in another state, the child must have resided in Delaware for the previous 6 months and the state that entered the order must be willing to relinquish jurisdiction. You must contact the court that entered the order to find out how this is done.

What if both parties agree on the modification?

You may file a Consent Order along with your Petition to Modify Custody. A Judicial Officer will review your consent order. If the Consent Order is signed by the Judicial Officer, it becomes a Court Order, which must be followed.

Will I attend mediation?

After all of the Respondents have been served with the Petition for Visitation or Petition to Modify Visitation and each of the Respondents has had an opportunity to file an Answer, the Court normally will schedule your visitation matter for Mediation. ALL PARTIES are required to attend. Mediation will not be scheduled if there is an active no contact order between the parties or a finding of domestic violence, or if one of the parties is a sex offender as defined by Delaware law.

How does the Court make a decision regarding custody modification?

A custody order can only be modified in certain situations:

- *If the original custody order that you want to change is a **consent order** (you and the Respondent(s) agreed to the custody arrangement), then it can be modified anytime the Court finds that it is in the “best interest” of the child.

- *If the original custody order was **entered by the Court after a full hearing AND** it has been **less than two years** since it was entered, the order can be changed only if the Court finds that continuing to enforce the order would endanger the child’s physical health or significantly impair the child’s emotional development.

- *If the order was **entered by the Court after a full hearing AND** if has been **more than two years** since it was entered, the order can be changed only after the Court considers the following factors:

 - *Whether any harm caused by changing the order is outweighed by the benefit of changing the order; **AND**

 - *Each parent’s compliance with the prior order; **AND**

 - *The “best interest” of the child.

For more information on custody modification, please see the Custody Modification Instruction Packet. This packet is available in the Resource Centers located in each courthouse and online at <http://www.judicial.state.de.us/family>.